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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere*

Summary

The unprecedented, rapid development of new communication and information technologies, such as the Internet and social media, has enabled wider dissemination of racist and xenophobic content that incites racial hatred and violence. In response, States, international and regional organizations, civil society and the private sector have undertaken a variety of legal and policy initiatives.

In the present report, the Special Rapporteur examines the context, key trends and the manifestations of racism on the Internet and social media, and provides an overview of the legal and policy frameworks and the measures taken at international, regional and national levels, as well as some of the regulatory norms adopted by Internet and social network providers. He presents examples of measures taken to respond to the use of the Internet and social media to propagate racism, hatred, xenophobia and related intolerance, while highlighting the overall positive contribution of the Internet and social media as an effective tool for combating racism, discrimination, xenophobia and related intolerance.

* Late submission.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 16/33. It builds upon the report of the Special Rapporteur submitted to the General Assembly (A/67/326), in which he examined issues relating to the use of new information technologies, including the Internet, for disseminating racist ideas, hate messages and inciting racial hatred and violence. It also builds upon reports of previous mandate holders, taking into account recent developments and information gathered in particular through an expert meeting and research conducted by the Special Rapporteur.

2. The present report should be considered together with the previous report of the Special Rapporteur, in which he raised concerns at the use of the Internet and social media by extremist groups and individuals to disseminate racist ideas and to propagate racism, racial discrimination, xenophobia and related intolerance. States, national human rights institutions, civil society organizations and academics have also expressed concern regarding the increased use of the Internet and social media to proliferate, promote and disseminate racist ideas by extremist political parties, movements and groups. Concerns have also been raised about the rising number of incidents of racist violence and crimes against, in particular, ethnic and religious minorities and migrants, and the lack of adequate data on such violence and crimes. Extremist groups and movements, particularly far-right movements, use the Internet and social media networks not only as a means to disseminate hate speech and incite racial violence and abuse against specific groups of individuals, but also as a recruitment platform for potential new members.

3. Although there are a number of legal, regulatory, technical and other practical challenges to the fight against racism and incitement to hatred and violence on the Internet, the enforcement of laws and regulations is challenging owing to the complexity occasioned by the lack of clarity of legal terms. The effectiveness of national legislation also becomes limited since States adopt differing laws, policies or approaches with regard to hate or racist content on the Internet. In addition, due to their transborder nature, cases related to racism, incitement to racial hatred and violence through the Internet most often fall under different jurisdictions, depending on where the inappropriate or illegal content was hosted and created and where hate crimes prompted by such racist or xenophobic content took place.

4. The unprecedented, rapid development of new communication and information technologies, including the Internet, has enabled wider dissemination of racist and xenophobic content that incites racial hatred and violence. In response, States, international and regional organizations have undertaken a variety of legal and policy initiatives. Civil society organizations have also contributed to addressing this phenomenon through various measures and initiatives. Some technological measures have also been initiated by the private sector, including social media platforms and networks. A more comprehensive approach to combat the challenge is however necessary. Such an approach should involve dialogue and consultation among the relevant actors and stakeholders.

5. In the present report, the Special Rapporteur, after providing an overview of his activities, examines the context, key trends, manifestations of racism on the internet and social media (sections A and B). He then provides an overview of the legal and policy frameworks and measures taken at the international, regional and national levels, and also some of the regulatory frameworks adopted by Internet and social network providers (section C). He then presents different examples of measures for responding to the use of the Internet and social media to propagate racism, racial hatred, xenophobia, racial discrimination and related intolerance (section D), while highlighting the positive contribution of the Internet and social media as an effective tool for combating racism,

racial discrimination, xenophobia and related intolerance. The conclusions and recommendations are outlined in section VI.

II. Activities of the Special Rapporteur

A. Country visits

6. The Special Rapporteur would like to thank the Governments of Greece and of the Republic of Korea, which have accepted his request for country visits. He welcomes the agreement on dates with regard to the visit to the Republic of Korea for September and October 2014, and hopes to undertake the visit to Greece before the end of 2014.

7. The Special Rapporteur renewed his request to visit India, South Africa and Thailand, for which he was awaiting an invitation at the time of writing. The Special Rapporteur also sent a request for a follow-up visit to Japan and a request for a visit to Fiji.

8. The Special Rapporteur visited Mauritania from 2 to 8 September 2013.[1] He expresses his sincere gratitude to the Government for its cooperation and openness in the preparation and conduct of his visit.

B. Other activities

9. On 14 and 15 May 2013, the Special Rapporteur participated in a conference on the theme "Right-wing extremism and hate crime: minorities under pressure in Europe and beyond", in Oslo, organized by the Ministry of Foreign Affairs of Norway. The conference brought together international experts to discuss challenges and possible solutions relating to the rise of right-wing extremism and hate crimes directed against minorities in Europe and beyond.

10. On 24 and 25 June 2013, the Special Rapporteur attended the International Meeting for Equality and Non-Discrimination in Mexico City, organized by the Mexican National Council to Prevent Discrimination (CONAPRED). The meeting brought together international experts to debate and review international efforts to prevent discrimination and share good practices.

11. On 6 and 7 March 2014, the Special Rapporteur participated in the third and final meeting of the Teaching Respect for All Advisory Group at the United Nations Educational, Scientific and Cultural Organization (UNESCO), Paris, which reviewed the outcomes of several pilot projects conducted at the national level and validated the Teaching Respect for All Toolbox, an initiative undertaken by UNESCO to develop educational material promoting non-discrimination and inclusion.

12. On 20 March 2014, the Special Rapporteur held an exchange of views with the European Commission against Racism and Intolerance of the Council of Europe in Strasbourg, where themes of common interest and possible areas of future cooperation were discussed.

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[1] See A/HRC/23/49/Add.1.

III. Use of the Internet and social media for propagating racism, racial discrimination, xenophobia and related intolerance

A. Context

13. In his report to the General Assembly (A/67/326), the Special Rapporteur undertook a preliminary examination of the issue of racism and the Internet, illustrating some of the key trends and challenges posed by the use of the Internet to propagate racism, racial hatred, xenophobia, racial discrimination and related intolerance.

14. In the present report, the Special Rapporteur builds upon the previous discussions, and illustrates some of the more recent manifestations of racism and hate on the Internet and social media networks. He discusses the applicable legislation and standards at the international, regional and national levels, but also through the norms of some key providers of social media platforms available on the Internet. Drawing from studies and from an expert meeting that he convened in New York on 11 and 12 November 2013, with the participation of academics, representatives of Internet and social media providers and civil society, the Special Rapporteur seeks to provide an updated overview of the remaining challenges and some good practices in the fight against racism and discrimination on and through the Internet.

15. At the above-mentioned expert meeting, discussions were held on the key issues, dilemmas and challenges posed in combating the propagation of racist and xenophobic content and incitement to violence on the Internet and social media, the governance of racist and xenophobic content on the Internet, and the balance between the protection of freedom of opinion and expression and the control of racist and xenophobic content and incitement to violence on the Internet. Views were exchanged on the key legal and policy measures taken at the national, regional and international levels, and good practices in combating racist and xenophobic content and in the promotion of the Internet as a tool against racism, racial discrimination and xenophobia were highlighted. The Special Rapporteur thanks the Association for Progressive Communications and Article 19 for their role in the successful outcome of the expert meeting.

B. Manifestations of racism, xenophobia, hate speech and other related forms of intolerance on the Internet and social media networks

16. The Internet, unlike traditional forms of communication and information technologies, has a tremendous capacity to transmit and disseminate information instantly to different parts of the world. It enables users to access and provide content with relative anonymity. Materials and content available on the Internet can be shared across national borders and be hosted in different countries with different legal regimes. Since the worldwide web was created 25 years ago, it has brought many benefits to all aspects of modern life as it continues to spread globally; more recently, social media platforms have emerged and become increasingly popular, and made it significantly easier for users to share information, photographs and links with friends and family. Since the creation of social media platforms, the Internet has evolved even more rapidly, to the extent that, today, every minute, 100 hours of videos are posted on the YouTube platform, and more than 1.5 billion photographs are uploaded every week on the Facebook network.

17. One of the greatest drawbacks of the Internet, however, is the fact that it also provides a platform to racist and hateful movements. The authors Abraham H. Foxman and

Christopher Wolf recently described the situation of how racism, xenophobia and hate manifest on the Internet:

> Today there are powerful new tools for spreading lies, fomenting hatred, and encouraging violence. [...] The openness and wide availability of the internet that we celebrate has sadly allowed it to become a powerful and virulent platform not just for anti-Semitism but for many forms of hatred that are directly linked to growing online incivility, to the marginalization and targeting of minorities, to the spread of falsehoods that threaten to mislead a generation of young people, to political polarization, and to real-world violence.

The authors accurately perceive the dangers and challenges posed by the Internet and social media:

> Instead of being under the central control of a political party or group, the power of the Internet lies in its viral nature. Everyone can be a publisher, even the most vicious anti-Semite, racist, bigot, homophobe, sexist, or purveyor of hatred. The ease and rapidity with which websites, social media pages, video and audio downloads, and instant messages can be created and disseminated on-line make Internet propaganda almost impossible to track, control, and combat. Links, viral e-mails, and "re-tweets" enable lies to self-propagate with appalling speed.[2]

18. The Special Rapporteur observes that there is an increasing use of electronic communication technologies, such as electronic mail and the Internet, to disseminate racist and xenophobic information and to incite racial hatred and violence. Right-wing extremist groups and racist organizations use the Internet in their transborder communications and exchange of racist materials. As technology evolves, extremist hate sites have similarly grown in both number and technological sophistication.

19. The Special Rapporteur notes with serious concern the use of the Internet and social media by extremist groups and individuals to disseminate racist ideas and to propagate racism, racial discrimination, xenophobia and related intolerance. This concern has also been echoed by many States, non-governmental organizations and Internet providers and social media platforms. One major consequence of the dissemination of such information is that the more people see hateful information, the more they tend to accept it and believe that the ideas are normal and mainstream.

20. Another major concern is that extremist groups and movements, particularly far-right movements, use the Internet and social media platforms not only as a means to disseminate hate speech and to incite racial violence and abuse against specific groups of individuals, but also as a recruitment platform for potential new members. The potential of the Internet is used to expand their networks of individuals, movements and groups, as it allows the rapid and more far-reaching dissemination of information about their aims and facilitates the sending of invitations to events and meetings. The web is also used by extremist movements and groups to distribute newsletters, video clips and other materials. It is worrying that calls for violence against individuals and groups advocating anti-racism activities are placed on websites and social media to intimidate, exert pressure or stop social or political actions or activities directed against extremist groups.[3]

21. The situation of marginalized persons and groups who are discriminated against on the Internet and social media largely reflects the challenges they face in the real world. While Internet technology has helped to connect and empower minority groups and

[2] Abraham H. Foxman and Christopher Wolf, *Viral Hate: Containing its Spread on the Internet* (New York, Palgrave Macmillan, 2013).

[3] See A/HRC/26/50.

individuals, it has also increased their vulnerability by collecting their personal information, which can be accessed by extremists, allowing the groups to extend their reach. The Internet and social media can also empower extremist groups by giving them the illusion that their hateful beliefs are shared by a large community. This justification of their beliefs sometimes affords them the confidence to follow through with hate crimes in real life. Thus, hate and racism move from the virtual to the real world, with a disproportionate impact on marginalized groups.

C. Legal, policy and regulatory frameworks and measures taken at the international, regional and national levels by Internet and social media providers

22. In response to these above-described developments, international and regional organizations and States have undertaken a variety of legal and policy initiatives. Civil society and the private sector, and Internet and social media providers in particular, have also contributed to addressing this phenomenon through various measures and initiatives.

1. International frameworks and initiatives

23. The International Convention on the Elimination of All Forms of Racial Discrimination provides in its article 4 (a) that States parties shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, as well as incitement to racial discrimination; and in article 4 (b) it provides that States parties shall declare illegal and prohibit organized and all other propaganda activities which promote and incite racial discrimination.

24. A number of United Nations human rights mechanisms have addressed the issue of the use of the Internet and social media to propagate racism, racial hatred, xenophobia, racial discrimination and related intolerance. The Committee on the Elimination of Racial Discrimination, in its general recommendation XXIX on descent-based discrimination, recommended that States take strict measures against any incitement to discrimination or violence against descent-based communities, including through the Internet. Furthermore, in its general recommendation XXX on discrimination against non-citizens, the Committee recommended that action be taken to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of "non-citizen" population groups, in particular by politicians, officials, educators and the media, on the Internet and other electronic communications networks. The Committee has also expressed concern at the dissemination of racist propaganda on the Internet in a number of recent concluding observations issued after consideration of regular reports submitted by States parties, recalling that such dissemination falls within the scope of prohibitions of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

25. More recently, at its eighty-first session, held in August 2012, the Committee on the Elimination of Discrimination organized a thematic discussion on racist hate speech, which also touched upon the issue of the Internet and led to the adoption by the Committee of its general recommendation XXXV on combating hate speech. In the recommendation, the Committee recalled that racist hate speech, whether originating from individuals or groups, can take many forms, notably in being disseminated through electronic media, the Internet and social networking sites, and reminded States to pay full attention to all these manifestations of racism, xenophobia and related intolerance and to take effective measures to combat them. The Committee called upon States to encourage public and private media to adopt codes of professional ethics, and recalled the essential role played by the Internet and social media in the promotion and dissemination of ideas and opinions. The Committee

recommended that Internet and social media service providers ensure self-regulation and compliance with codes of ethics, as had been underlined previously in the Durban Declaration and Programme of Action.

26. The Durban Declaration and Programme of Action, adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001, highlighted several important areas of action, in particular, the positive contribution made by the new information and communications technologies, including the Internet, in combating racism through rapid and wide-reaching communication. The progression of racism, discrimination, xenophobia and intolerance through the new information and communications technologies, including the Internet, was however a cause for concern for relevant stakeholders. As such, States were encouraged to implement legal sanctions, in accordance with relevant international human rights law, with regard to incitement to racial hatred on the Internet and social media. Furthermore, the Durban Declaration and Programme of Action called upon States to encourage Internet service providers to establish and disseminate specific voluntary codes of conduct and self-regulatory measures against the dissemination of racist messages, to set up mediating bodies at the national and international levels, also involving civil society, and to adopt appropriate legislation for the prosecution of those responsible for incitement to racial hatred or violence through the Internet and social media.

27. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression addressed the issue of the right of all individuals to seek, receive and impart information and ideas of all kinds through the Internet in 2011, when he underscored the unique and transformative nature of the Internet not only in enabling individuals to exercise their right to freedom of opinion and expression, but also a wide range of other human rights, and to promote the progress of society as a whole.[4] The Special Rapporteur also addressed the circumstances under which the dissemination of certain types of information could be restricted, the issues of arbitrary blocking or filtering of content, the criminalization of legitimate expression and the imposition of intermediary liability.

28. The Rabat Plan of Action on the prohibition of advocacy on national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, adopted in 2012, reiterated that all human rights are universal, indivisible and interdependent and interrelated, and recalled the interdependence between freedom of expression and other human rights. The realization of freedom of expression enabled public debate, giving voice to different perspectives and viewpoints and playing a crucial role in ensuring democracy and international peace and security. The Rabat Plan of Action also stressed the importance of the role that the media and other means of public communication, such as the Internet and social media, play in enabling free expression and the realization of equality, and reiterated that freedom of expression and freedom of religion or belief are mutually dependent and reinforcing.

29. The United Nations Educational, Scientific and Cultural Organization (UNESCO) developed an integrated strategy to combat racism, discrimination, xenophobia and intolerance based on a series of studies and consultations on different aspects and forms of racism, xenophobia and discrimination, including the issue of combating racist propaganda in the media, in particular in cyberspace. The strategy includes a set of measures to be taken by the Organization in response to the potential use of new information and communications technologies, in particular the Internet, to spread racist, intolerant or discriminatory ideas. In 2013, UNESCO also developed the Teaching Respect for All

[4] See A/HRC/17/27.

initiative, where the use of Internet in the classroom and curriculum is encouraged for an inclusive and tolerant curriculum, and makes recommendations for the development of new practices, particularly for youth with different cultural backgrounds and perspectives.

30. The United Nations Office on Drugs and Crime has also addressed the issue of cybercrime, including specific computer-related acts involving racism and xenophobia, by various means, such as providing technical assistance and training to States to improve national legislation and building the capacity of national authorities to prevent, detect, investigate and prosecute such crimes in all their forms. The International Telecommunication Union (ITU) has also been involved in the issue of cybersecurity and efforts to combat cybercrime since the World Summit on the Information Society and the ITU Plenipotentiary Conference, held in Guadalajara, Mexico, in 2010. ITU has also initiated the Global Cybersecurity Agenda, a framework for international cooperation aimed at enhancing global public confidence and security in the information society. ITU provides Member States with support through specific initiatives and activities related to legal, technical and procedural measures, organizational structures, and capacity-building and international cooperation on cybersecurity.

2. Regional frameworks and initiatives

31. At the regional level, the Council of Europe Convention on Cybercrime and the Additional Protocol thereto constitute a legally binding framework with the widest reach. The Convention, which entered into force on 1 July 2004, is the first international treaty on crimes committed via the Internet and other computer networks dealing particularly with infringements of copyright, computer-related fraud, child pornography and violations of network security. The Additional Protocol, which concerns the criminalization of acts of a racist and xenophobic nature committed through computer systems and entered into force on 1 March 2006, makes the publication of racist and xenophobic propaganda via computer networks a criminal offence. The Additional Protocol also specifies that States parties are to adopt legislative and other measures that make a number of actions criminal offenses, including distributing or otherwise making available racist and xenophobic material; racist and xenophobic-motivated threats; racist and xenophobic-motivated insults; the denial, gross minimization, approval or justification of genocide or crimes against humanity; and aiding and abetting any of these actions.

32. The European Commission against Racism and Intolerance adopted General Policy Recommendation No. 6 in 2000, which focuses on combating the dissemination of racist, xenophobic, and anti-Semitic material on the Internet. The Commission also outlined a set of recommendations for Council of Europe Member States, one of which was the passing of a protocol to address racism and xenophobia on the Internet, which led to the above-mentioned Additional Protocol. The Commission has also published reports on reconciling freedom of expression with combating racism and on addressing racist content on the Internet.

33. The Council of Europe sponsored two initiatives against racism and hate on the Internet. The No Hate Speech Movement, a campaign focused on youth, was launched in 2012 to map hate speech online, to raise awareness about the risks that hate speech pose to democracy, to reduce acceptance of hate speech online and to advocate development and consensus on European policy instruments combating hate speech. This initiative also led to the creation of Hate Speech Watch, an online platform designed to monitor online hate speech content and to facilitate coordinated action against it. The Council of Europe has also initiated Young People Combating Hate Speech Online, an initiative with the aim of equipping young people and youth organizations with competences and tools to recognize and take positive action against discrimination and hate speech.

34. The Organization for Security and Cooperation in Europe (OSCE) has been enhancing its work in combating racism, racial discrimination, xenophobia and related intolerance on the Internet, starting in 2003, when the OSCE Ministerial Council made a commitment to combat hate crimes fuelled by racist, xenophobic and anti-Semitic propaganda on the Internet. In 2009, OSCE assigned the Office for Democratic Institutions and Human Rights with the task of exploring the potential link between the use of the Internet and bias-motivated violence and the harm it causes, as well as eventual practical steps to be taken.[5] More recently, in 2010, OSCE adopted the Astana Declaration in which it called upon Member States, in cooperation with civil society, to increase their efforts to counter the incitement to imminent violence and hate crimes, including through the Internet, while respecting the freedom of expression, and for using the Internet to promote democracy and tolerance education.

35. In 1998, the European Union adopted an action plan that encouraged self-regulatory initiatives to deal with illegal and harmful Internet content, including the creation of a European network of hotlines for Internet users to report illegal content such as child pornography; the development of self-regulatory and content-monitoring schemes by access and content providers; and the development of internationally compatible and interoperable rating and filtering schemes to protect users. In May 2005, the European Union extended the action plan, entitled the "'Safer Internet plus' programme", for the period 2005-2008, to promote safer use of the Internet and new online technologies, and particularly to fight against illegal content, such as child pornography and racist material, and content that is potentially harmful to children or unwanted by the end-user. More recently, theSafer Internet Programme (2009-2013) was implemented to promote safer use of the Internet and other communication technologies, to educate users, particularly children, parents and carers, and to fight against illegal content and harmful conduct online, such as "grooming and bullying".

36. Other regional initiatives have been taken to reach a common understanding and coordination on principles and standards for the fight against cybercrime and to improve cybersecurity. In 2002, the Commonwealth of Nations developed a model law on cybercrime that provided a legal framework to harmonize legislation within the Commonwealth and to enable international cooperation. The same year, the Organization for Economic Cooperation and Development completed its Guidelines for the Security of Information Systems and Networks. It is now conducting a review of the Guidelines.

37. Similar regional initiatives aimed at reaching a common understanding and coordination on principles and standards for fighting cybercrime and improving cybersecurity have also been taken in other regional organizations. In 2001, the Association of Southeast Asian Nations (ASEAN) adopted a work programme to implement the ASEAN Plan of Action to Combat Transnational Crime. At the thirteenth ASEAN Senior Officials Meeting on Transnational Crime, in 2013, a work programme for 2013-2015 was adopted, which focused also on cybercrime and cybersecurity. In 2002, the Asia-Pacific Economic Cooperation (APEC) issued a cybersecurity strategy that outlined five areas for cooperation, including legal developments, information-sharing and cooperation, security and technical guidelines, public awareness, and training and education. More recently, APEC reiterated the commitment made to strengthen the domestic legal and regulatory framework on cybercrime and encouraged member States in particular to create strategies to create a trusted, secure and sustainable online environment, to address the misuse of the Internet, to develop watch, warning and incident response and recovery capabilities to help prevent cyberattacks, and to support cooperative efforts among economies to promote a

[5] Available from http://www.osce.org/cio/40695.

secure online environment. In 2007, the League of Arab States and the Gulf Cooperation Council made a recommendation to seek a joint approach on cybercrime-related issues by taking into consideration international standards. In 2009, the Economic Community of West African States (ECOWAS) adopted a directive on fighting cybercrime in the ECOWAS region that provided a legal framework for its member States. In 2012, the East African Community adopted a framework for cyberlaw, which provided an overview of the legal issues relating to intellectual property, competition, taxation and information security.

38. In 2004, the Organization of American States (OAS) implemented the Inter-American Integral Strategy to Combat Threats to Cyber Security, the main objectives of which were to establish national "alert, watch and warning" groups, known as Computer Security Incident Response Teams, in each country, to create a hemispheric watch and warning network providing guidance and support to cybersecurity technicians from around the Americas, and to promote a culture and awareness of cybersecurity for the region. Other initiatives by OAS include the Inter-American Cooperation Portal on Cyber-Crime and the meetings of Ministers of Justice or Other Ministers or Attorneys General of the Americas, which are aimed at strengthening hemispheric cooperation in the investigation and prosecution of cybercriminality. More recently, in 2013, OAS and the Latin American and Caribbean Internet Addresses Registry signed a cybersecurity agreement to strengthen the development of the ties among Governments, the private sector and civil society in the Americas, thus ensuring a multidimensional approach to cybersecurity.

39. Although the above-mentioned initiatives include specific computer-related crimes involving incitement to racial hatred and violence, the majority of them do not specifically address content-related offences, such as the dissemination of racist ideas or incitement to racial hatred and violence on the Internet and social media, focusing rather on other forms of cybercrime and cybersecurity concerns.

3. Legal and regulatory frameworks taken at the national level and by Internet and social media providers

40. The issues of racism and incitement to racial hatred and violence on the Internet and social media have been addressed not only through national frameworks but also through different initiatives taken by Internet service providers and social media platforms. The Special Rapporteur has identified three main models emerging from the different frameworks and initiatives: the censorship model; the regulatory framework; and the freedom of speech approach.

41. Internet and social media censorship consists of suppressing information and ideas in order to "protect" society from "reprehensible" ideas. States are able to censor Internet content through various means, such as by setting up agencies to monitor the Internet and deciding what to censor according to established norms. This can also be achieved, by both States and Internet and social media providers, by programing Internet routers to block or censor the flow of specific data from Internet servers to service providers, and therefore to Internet and social media users. Moreover, when "objectionable" information is posted online, States can promptly demand that the Internet provider or social media platform remove it. In order to be effective, this type of censorship requires States to have extremely efficient systems in place to track and survey posted content and then to quickly remove it. Internet providers or social media platforms themselves may also achieve this goal, although with a lesser degree of efficiency.

42. The Special Rapporteur believes that while censorship does not necessarily need to serve illegitimate ends and can be used to suppress racially hateful speech, there are significant drawbacks. Censorship policies can have a chilling effect, as users who know that their online activities are screened by a government agency are less inclined to engage in freedom of expression. Users can be further deterred if they are unsure whether the

information they post will be removed or their liability will be invoked. In the view of the Special Rapporteur, the main concern is that censorship impedes the fundamental right to freedom of expression, as expressed in article 19 of the International Covenant on Civil and Political Rights and subsequent concluding observations.

43. Another model is the regulation framework, implemented either by the State or the Internet or social media provider. States can create a legal framework that determines what content on the web can be considered illegal. Under this model, a court or regulatory body determines whether the content should pursuant to the applicable law, be blocked, before the said content is filtered or removed. Alternatively, a non-governmental organization can be given the responsibility of monitoring the content posted on the Internet. While courts are usually seen as independent of political influence, a watchdog organization might, however, be viewed as applying government policies.

44. The Special Rapporteur was informed that, under the regulatory model, users may also be able to submit information to the overseeing body on content they feel violates the law and should be removed. This allows Internet users to implement self-censorship, and it also helps to ensure that illegal content will be found and removed, given that more users are looking out for it. A major benefit of the regulatory model is that it is more transparent than censorship. Internet users are usually aware of what information is allowed, and can have a voice in deciding what content will be blocked by voting for the politicians who make these laws. However, one drawback of allowing users to submit removal requests is that the decision-making process is often not transparent. Thus, after users submit their requests, they have no way of knowing why their request was granted or denied. This issue can be mitigated by ensuring that Internet users are informed of the decision-making process on content removal.

45. The above-mentioned regulatory model has been set up in France, where content and activity on the Internet is regulated by law LCEN 2004-575. The law relieves Internet service providers and social media platforms of responsibility for illegal content if they have "no knowledge of illegal activity or material" or if they have "acted promptly to remove or block access to it as soon as it was discovered". The providers are also not held responsible if they did not know how the illegal activity or material arose. Once a judicial order is issued and proper notice is given, the hosting website is liable for any further reposting of the illegal material. A website may also be held liable for redirecting Internet users to other websites hosting illegal content. The benefit of the regulatory system used in France is that it is more transparent, with a court assessing whether a website should be blocked before any filtering is implemented. Moreover, it allows the Internet or social media provider the opportunity to remove the objectionable information prior to the issuance of a court order.

46. The Special Rapporteur was informed that, in the United Kingdom of Great Britain and Northern Ireland, the Internet is regulated by the Office of Communications (Ofcom), the mandates of which includes protecting audiences against harmful material, unfairness and infringements of privacy. Internet service providers and social media platforms are considered mere conduits of information and are not responsible for any illegal information transmitted. Although the State does not require providers and platforms to monitor information being transmitted, some filter certain types of content, such as child pornography materials, on their own initiative. In such a filtering system, called CleanFeed, the Internet Watch Foundation, a non-profit organization, works with the Government to compile a list of websites it deems illegal, then transmits the information to Internet service providers. The body, which is funded by the Internet industry, works with the police, the Home Office and the Crown Prosecution Service to receive public complaints and to determine whether the content hosted on a website is illegal. In the CleanFeed system, however, the list of filtered websites is not made public, which can lead to abuse when

determining which content should be filtered. Moreover, the body's decisions are not subject to judicial review, because it was not created by legislation, but has its own internal appeal procedure.

47. An alternative way of addressing racism and hate speech on the Internet and social media is to apply no kind of censorship or regulation, based on the ideal of freedom of speech and expression. Users are free to express their ideas and post comments or content that can be offensive, racist, xenophobic or hateful in any kind of meaning, and other users react to such racist or hateful speech or content by counter-speech. Although such an approach limits the interference of the State or of Internet or social media providers, it can allow anyone to spread hateful or racist language, ideas or contents that can offend, ridicule or marginalize a specific individual, group or population. Such an unlimited right to freedom of speech and expression can also be destructive to society, because it may increase tensions between certain groups and cause unrest.

48. The United States of America provides an example of freedom of speech that seeks to limit prohibitions, based on the First Amendment to the Constitution. In the case of *Chaplinsky v. New Hampshire* (1942), the Supreme Court of the United States ruled that:

> There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or "fighting" words – those which by their very utterance inflict injury or tend to incite an immediate breach of peace… It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.

49. Since the case, the Supreme Court has also ruled that persons are free to choose the words that best express their feelings, and that strong or offensive language may better convey the person's feelings. It has since then also struck down States' laws that were considered too broad in prohibiting speech, on the grounds that, if the statute suffers from overreach, the effect is to chill free speech. A restriction may, however, be placed on freedom of speech when the insulting or hate speech is likely to incite to or promote violence, and can thus be prohibited. Nevertheless, this violence must be of an immediate threat. The Supreme Court has not directly specified which degree of offensiveness of the language used may constitute such an immediate threat.

50. Nevertheless, the Special Rapporteur recalls article 19, paragraph 3, of the International Covenant on Civil and Political Rights, and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, which stipulate that the right to freedom of opinion and expression may be restricted legitimately under international human rights law essentially to safeguard the rights of others, and that that States are to declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination, and prohibit activities that promote and incite racial discrimination. Content that may be restricted includes child pornography (to protect the rights of children), hate speech (to protect the rights of affected communities), defamation (to protect the rights and reputation of others against unwarranted attacks), direct and public incitement to commit genocide (to protect the rights of others), and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (to protect the rights of others, such as the right to life).[6]

[6] See A/HRC/17/27.

4. Models of regulation initiated by Internet and social media providers

51. Internet and social media providers also have set up internal regulatory frameworks; for example, Google has implemented an internal regulation policy that allows users to report content that they believe should be flagged for removal by Google services (www.google.com/transparencyreport/removals/copyright/faq/). Through the system, users submit separate requests on an online form for each service from which they believe content should be removed. These are considered legal notices, each of which is entered in a database, called "Chilling Effects", on requests for the removal of information from the Internet. The purpose of Chilling Effects is to protect websites from cease-and-desist orders issued by people claiming that posted content is copyrighted, and to determine whether the content is illegal or violates Google policies. While Google has set up a process for removing offensive information, such as racist contents or hate speech, the final say in determining which content to remove or hide remains the sole prerogative of Google.

52. Similarly, Twitter adheres to a policy on reporting violations of the website's terms of service (http://support.twitter.com/articles/20169222-country-withheld-content), which comprises an internal process of deciding which tweets should be removed for violating terms. The policy only highlights which content is not allowed, such as impersonation, sharing a third person's private information, and violence and threats, which raises the issue of lack of transparency in this internal regulatory process.

53. Another social media platform, Facebook, has also set up a removal policy for offensive content, although there have been criticism to its apparent lack of transparency. The Special Rapporteur was informed that users have been confronted with the arbitrary removal of content deemed abusive or offensive without being given. He also learned that users who reported racist or offensive content had not seen it removed, despite complaints submitted to social media moderators. Although Facebook has an extensive list in its terms of service (www.facebook.com/legal/terms) of prohibited content, users still do not know exactly what content will be censored, removed or left unattended, given that the platform retains the power to remove posts and content giving any reason. This lack of transparency has raised concern for users, some of whom believe that the process and reasons for removing posted content are unfair and prejudicial, while other requests to remove racist or offensive material are ignored.

54. The Special Rapporteur notes that Internet providers and social media platforms seem to be increasingly adapting their norms and policies to the State where users post content. Providers and platforms accordinglyrecord, store and provide information on users and information accessed, sometimes a prerequisite for permission to operate in the country concerned. The Special Rapporteur also reiterates his concern at the issue of what content is be considered "racist", "illegal" or "inciting hatred", and his views that Internet providers and social media networks should not make decisions regarding user-generated content, and take such actions as removing or filtering content on their own.[7] He also agrees with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression that censorship measures should never be delegated to private entities, and that intermediaries such as social media platforms should not be held liable for refusing to take action that infringes individuals' human rights. Any requests to prevent access to content or to disclose private information for strictly limited purposes, such as the administration of criminal justice, should be submitted through a court or a competent body independent of political, commercial or other unwarranted influences.[8]

[7] See A/67/326, para. 48.
[8] A/HRC/17/27, para. 75.

D. Civil society initiatives to counter racism, xenophobia, discrimination and other related hate speech on the Internet and social media

55. Civil society actors are essential to the efforts to combat racism and hate on the Internet and social media. The Special Rapporteur therefore highlights below some of the projects and contributions brought to his attention and which complement the initiatives taken at the international, regional and national levels. These actors often work together with international, regional or national authorities in allowing victims of racism, racial discrimination and xenophobia to defend their rights and to express their views on the Internet and social media.

56. The International Network against Cyber Hate (www.inach.net), based in Amsterdam, unites organizations from around the world to promote responsibility and citizenship on the Internet, and to counter hate speech. Its main activity is to act as an exchange platform for the numerous member organizations based in different countries, stimulating the sharing of knowledge in order to find new solutions for the challenges posed by hate speech in social media. Similarly, the Magenta Foundation, a non-profit organization, also based in Amsterdam, acts in response to human rights violations perpetrated in Europe and elsewhere. With the main objective of combating racism, anti-Semitism and discrimination based on ethnicity, the organization began to focus special attention on discrimination on the Internet in 1996. With the assistance of the Government of the Netherlands, the Foundation created the first complaints bureau for discrimination on the Internet (www.meldpunt.nl/), for handling complaints on discrimination on the Internet from servers based in the Netherlands. When the bureau deems that a complaint is acceptable, the website or social media platform is notified and requested to remove the content; in the event of non-compliance, the bureau may take legal action. In 2012, 78 per cent of notifications from public complaints were successful in leading to the removal of racist content and hate speech.[9] Besides handling complaints, the bureau promotes educative measures, such as public lectures in universities and workshops for the Dutch Police Department and the Public Prosecutor's Office. It also engages in research projects concerning trends in discrimination on the Internet.

57. The Southern Poverty Law Center (www.splcenter.org/), based in Montgomery, Alabama (United States of America), is dedicated to the fight against hate, racism and other forms of intolerance, and to seeking justice for the most vulnerable members of society. The early identification and the removal of racist content online are vital in preventing hate speech from spreading. The organization monitors the media and social websites in the United States for hate groups and hate speech based on racism or gender discrimination. Its findings are published online in a dedicated blog and in a quarterly report. The organization has also updates its own "hate map", which reflects the number and localization of hate speech groups in the United States.

58. The Anti-Defamation League (www.adl.org) is an organization active in the fight against anti-Semitism, racism and xenophobia. It has initiated education seminars for youth to stop cyberbullying, hate and intolerance online. One of the League's initiatives, the Cyber-Hate Action Guide, is directed at helping victims of cyberbullying. In the Guide compiles the hate speech policies of major websites based in the United States, and informs Internet users on how to report hate speech activities on each site.

59. The Association for Progressive Communications (www.apc.org) advocates for the creation of inclusive and non-discriminatory policies online. Several of its projects are aimed at combating gender-based discrimination and women's rights, while others are

[9] See www.magenta.nl/en/projects/8-mdi.

aimed at empowering women in Internet policy decisions. The Association's website hosts an online forum for the discussion of issues relating to gender-based discrimination. It also publishes a collaborative report, the Global Information Society Watch, which monitors the implementation of international commitments made by States, with a special focus on human rights.

60. Bytes for All (content.bytesforall.pk) is a human rights organization and research think tank based in Pakistan that advocates for discussions on information and communication technologies and human rights. Discussions of this type have resulted in an initiative with the objectives of securing freedom of expression online, strengthening the digital security of human rights defenders and ending gender-based violence online. The Open Net Initiative launched by the organization aims to investigate the impact posed by the increasing amount of censorship on the Internet.

61. The Take Back the Tech initiative, which involves several human rights organizations, including the Association for Progressive Communications and Bytes for All, is aimed at ending gender-based violence by increasing the influence that women have on policymaking on the Internet and in social media. It creates an online environment that features effective and reliable systems for reporting violence against women and empowering women in discussions that involve the creation of policy for social networking plattorms, web hosting and telephone operators.

62. The Umati initiative developed by the iHub innovation centre (www.ihub.co.ke) based in Nairobi aims at proposing a workable definition of hate speech and a contextualized methodology for its analysis; collecting and monitoring the occurrence of hate speech in Kenya; and promoting civic education and interaction both online and offline. Similarly, the It Gets Better project (www.itgetsbetter.org), started in 2010 in Los Angeles (United States of America), aims to provide emotional, psychological and legal support for LGBT youth victims of hate and discrimination. The project acts on social media platforms such as Facebook, Twitter and YouTube, posting positive and inspiring messages to those suffering from gender-based discrimination. Many important public figures have participated in video messages posted by the project. In Europe, iCud (Internet: Creatively Unveiling Discrimination) (digitaldiscrimination.eu), the combined effort of five grassroots organizations in different European Union countries and the University of Rovira i Virgili in Tarragona (Spain), is a project designed to raise awareness and to explore innovative ways to combat discrimination online. The initiative, which is supported by the Fundamental Rights and Citizenship Funding Programme of the European Union, is aimed at creating a framework for understanding hate speech and discrimination on the Internet, in addition to being an innovative model for combating discriminatory material.

63. The Special Rapporteur would also like to mention some mobile applications developed to combat racism, homophobia and hate speech. The "Kick It Out" app (www.kickitout.org), developed jointly by Make Positive and Sherry Design Studios, is designed to address racism in football matches. Endorsed by the Premier League and Football League in the United Kingdom, the app allows match-goers and supporters to report racism, anti-Semitism and homophobia in real time during the matches. The information collected is then forwarded to clubs and government bodies. Another application, "Everyday Racism", was developed by the Australian organization All Together Now and is supported by the University of Melbourne and other academic institutions in Australia (alltogethernow.org.au). Designed to raise awareness of racism against Aboriginal peoples, the application challenges players to live a week in the life of an Aboriginal person in order to gain an understanding of the prejudice that Aboriginals face. In France, the "app'Licra" application (www.licra.org/fr/l'app-licra-1ère-application-

antiraciste) allows individuals to take a picture of hate speech or racist graffiti attach its location and forward the information to the authorities, which can then remove it.

IV. Conclusions and recommendations

64. **Addressing racial, ethnic and xenophobic hatred on the Internet and social media networks poses new and complex challenges, particularly given the complexity of the phenomenon and the rapid evolution of technology. The Special Rapporteur nonetheless stresses that the Durban Declaration and Programme of Action and other international human rights instruments, such as the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights, and certain regional instruments provide a comprehensive framework for possible actions in combating the phenomenon of racial, ethnic and xenophobic hatred. The Rabat Plan of Action also provides a useful framework to States in combating racism. To that end, he welcomes the continued interest in and attention paid to racial and ethnic hatred, in particular on the Internet, by the Committee on the Elimination of Racial Discrimination, He is also grateful for the contribution of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to this discussion. The Special Rapporteur is keen to continue to promote dialogue on the issue, and welcomes the encouragement expressed by States, other United Nations mechanisms, and Internet and social media providers, as well as civil society organizations and academics, to continue research on the issue of racism and the Internet.**

65. **The Special Rapporteur also notes that important legal and policy efforts have been made at the regional and national levels to address the spread of racial, ethnic and xenophobic hatred and incitement over the Internet and through social media networks. Legislative measures are central to any strategy to combat racism, ethnic hatred and xenophobia; for this reason, the Special Rapporteur encourages States that have not enacted legislation to combat and prevent racial, ethnic and xenophobic hatred on the Internet and social media to consider doing so. Legislative measures must, however, take into account States' obligations to protect other fundamental rights, such as freedom of expression and opinion, as spelled out in both the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights, and should not be used as a pretext for censorship.**

66. **Combating the use of the Internet and social media to propagate racial, ethnic and xenophobic content and incitement to violence requires a multi-stakeholder approach. In this regard, the role of the private sector, in particular Internet service providers and social media platforms, and other relevant industry players is crucial. The Special Rapporteur has highlighted some of the measures already taken by the private sector to address the challenges of racism and incitement to racial hatred and violence on the Internet and social media. The Special Rapporteur would like to point out the positive contribution made by such initiatives as the promotion of end-user empowerment and education; the involvement of Internet service providers and social media platforms in policy discourses and in consultations on the issues of combating racism and incitement to racial hatred and violence on the Internet; the development of intelligent software in the areas of monitoring and filtering; and improvements in co-regulation and self-regulation mechanisms.**

67. The Special Rapporteur is aware of the intrinsic limitations of technical measures, but also of the risk that such measures lead to unintended consequences that restrict human rights. Given the multitude of stakeholders that may be involved in combating racism and incitement to racial hatred and violence on the Internet and social media networks, including Governments, private sector and civil society organizations at the national, regional and international levels, the Special Rapporteur emphasizes the importance of establishing clear responsibilities and roles for the different actors, and of strengthening and institutionalizing dialogue and collaboration among them.

68. In accordance with the provisions of the Durban Declaration and Programme of Action and the Rabat Plan of Action, the Special Rapporteur encourages States, civil society and individuals to use the opportunities provided by the Internet and social media to counter the dissemination of ideas based on racial superiority or hatred and to promote equality, non-discrimination and respect for diversity. One possible way of countering racism on the Internet and social media networks is through content diversification, in particular by promoting local content and initiatives. Directing more local content to the global network can contribute to greater understanding, tolerance and respect for diversity and offer great potential for reducing information asymmetry and misperceptions that feed racist and xenophobic sentiment.

69. In the global digital network, the voices of victims of racial discrimination most often remain absent because of their lack of access to the Internet and social media, therefore often leaving racist ideas unchallenged. In this regard, the Special Rapporteur reiterates that States and the private sector should adopt effective and concrete policies and strategies to ensure that access is widely available and affordable for all, on the basis of the principles of non-discrimination of any kind, including on the grounds of race, colour, descent, and ethnic or national origin. National human rights institutions should also be encouraged to lead the development of these initiatives.

70. The Special Rapporteur reminds States of the importance of recognizing the fundamental role that education plays in combating racism, racial discrimination, xenophobia and related intolerance, in particular in promoting the principles of tolerance and respect for ethnic, religious and cultural diversity and preventing the proliferation of extremist racist and xenophobic movements and propaganda. He therefore encourages them to use the unique educational potential of the Internet and social media networks to combat manifestations of racism, racial discrimination, xenophobia and related intolerance in cyberspace.

71. The Special Rapporteur notes the significance of educational and research activities, such as studies on the possible consequences of the dissemination of racist ideas, hate messages and incitement to racial hatred and violence on the Internet and social media; research and analysis on the effectiveness of existing legal, policy and technical measures; the development of educational programmes and training materials for young people; the promotion of media literacy programmes, including technical and textual Internet literacy; and the development and implementation of educational concepts that counter the spread of racist ideas, hate messages and incitement to racial hatred and violence on the Internet and social media.

72. The Special Rapporteur encourages all Internet service providers and social media platforms to issue clear policies on combating racial and ethnic incitement and hatred, and to include them in their term of service. Similarly,

Internet service providers, social media platforms and online moderators should also undertake training and education initiatives to address racism online. Greater understanding of the social experience of users is essential to develop technology that supports rather than marginalizes vulnerable users. Civil society and marginalized communities need support to build strong movements to counter racism and intolerance online. Community ownership of infrastructure, training in network and content management, and alternative software use, including free and open software, can help to bridge existing gaps in knowledge and access.

73. **The Special Rapporteur considers it important to continue examining the correlation between manifestations of racism on the Internet and social media and the number of hate crimes and cyberbullying committed. Given the lack of adequate data on this issue, he recommends that States and national human rights institutions increase their efforts to identify, investigate and register such crimes.**

74. **Lastly, given the rapid development of the Internet and the ever-changing nature of the trends observed, such as in social media networks, the Special Rapporteur would like to remain informed and follow-up regularly on the different dimensions of the problems of racism and the Internet and social media in the future.**

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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere

Addendum

Mission to Mauritania* **

Summary

The present report contains the findings and observations of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, following his visit to Mauritania (2–8 September 2013) at the invitation of the Government. The main objective of the visit was to evaluate progress made since his predecessor, Doudou Diène, first visited the country in 2008. The Special Rapporteur noted the progress accomplished by the State towards meeting its human rights obligations and the openness by the Government vis-à-vis the international human rights mechanisms. He also noted that a number of challenges persist with regard to eliminating ethnic and descent-based discrimination and the marginalization of certain segments of the population. The report concludes with a variety of recommendations which the Special Rapporteur wishes to offer to the Government in a spirit of constructive dialogue and engagement.

* Late submission.

** The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission and in French only.

Annex

[English and French only]

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, on his mission to Mauritania (2 to 8 September 2013)

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I. Introduction

1. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, undertook an official visit to Mauritania from 2 to 8 September 2013 at the invitation of the Government. During his visit, he held meetings in Nouakchott, Rosso and Kaedi. He met the highest government representatives, at the national and local levels, as well as representatives of civil society, non-governmental organizations, human rights defenders and victims of human rights violations including slavery-like practices and ethnic and descent-based discrimination.

2. The Special Rapporteur would like to thank the Government of Mauritania for its invitation and the cooperation provided before and during this visit. He would also like to thank all the authorities he met for the insightful and detailed discussions. He is grateful for the fruitful discussions with the civil society organizations and to the victims who courageously shared their stories with him. He would also like to thank the United Nations country team, and particularly the Office of the High Commissioner for Human Rights, for their invaluable support and the exchanges he had with them.

3. The Special Rapporteur visited Mauritania to evaluate progress made since his predecessor, Doudou Diène, first visited the country in 2008, obtain an up-to-date understanding of the situation regarding the elimination of ethnic and descent-based discrimination and identify the remaining challenges, with a view to providing constructive recommendations which it is hoped will assist the Government in advancing its fight against racial and ethnic discrimination.

4. The Special Rapporteur appreciated this opportunity to assess the compliance of Mauritania with its international obligations and the implementation of the recommendations made by the various human rights mechanisms. In this regard he would like once again to commend the Government for acceding to many international human rights instruments. The cooperation between Mauritania and international human rights mechanisms, special procedures, treaty bodies and the universal periodic review must also be acknowledged. There is no doubt, in the Special Rapporteur's opinion, that there has been real progress in the implementation of some of the recommendations made by human rights mechanisms. Yet he found that a number of challenges still persist and should be addressed as a matter of priority. Achievements and challenges identified in the Special Rapporteur's findings are further described in the sections below.

II. Context

5. Mauritania is a multi-ethnic and multi-cultural country with an estimated population of 3,542,000,[1] the majority of whom live in rural communities, have very precarious livelihoods and are heavily dependent on agriculture and pastoralism. The population can be divided into two groups: the Moors, including the black moors (Haratines) and the Afro-Mauritanians, including the Fulani (Peulh), Soninke, Wolof and Bambara. Most of the non-governmental stakeholders whom the Special Rapporteur met reported that the Arab-Moors dominate participation in political and economic life, whereas the majority of the population, mainly represented by the other two groups, have been de facto systematically excluded. This situation has kept these groups in a very precarious condition of poverty and

[1] United Nations Educational, Scientific and Cultural Organization (UNESCO) Institute for Statistics, Education (all levels) profile – Mauritania (2013).

relegated them to the fringes of society since before the country's independence, thus fuelling frustrations and anger.[2] The Special Rapporteur met with members of some of the affected groups, who clearly expressed a high level of frustration related to the Government's failure to effectively address the conditions which perpetuate discrimination and marginalization.

6. The Haratine are thought to constitute the largest ethnic group in Mauritania and the most politically and economically marginalized in what remains a society deeply stratified by ethnicity, descent, castes and class. The word Haratine is derived from the Arabic word for freedom, as they are perceived by the rest of society as freed slaves.

7. Despite some visible progress, the Haratine are said to be the most disenfranchised community and suffer from discrimination, marginalization and exclusion due to their descent. Approximately 50 per cent of the Haratine community are in conditions of de facto slavery through domestic servitude and bonded or forced labour.[3] The Haratine remain marginalized and underrepresented in political and public positions. In 2013, it was reported that out of 95 seats in the National Assembly, only 5 were held by Haratine; and out of the 56 senators only 1 was Haratine. Moreover, only 2 out of 13 regional governors and 3 of the 53 regional prefects were Haratine. Haratine are said to account for the largest share of the total illiterate population; the majority of Haratine have not completed primary education; and they constitute only 5 per cent of those enrolled in higher education. The vast majority of dockers, domestic workers and labourers performing unskilled and low-paid jobs are said to be Haratine, while very few Haratine occupy high-ranking civil service or senior executive posts in the public and private sectors. Haratine also claim that they have been excluded from the business and banking sectors, as commercial enterprises are usually headed by non-Haratine.

8. Similar discriminatory practices affect to varying degrees, the other Afro-Mauritanian communities, especially the Wolof minority.

9. The Moors are divided into many different tribes stratified in castes by profession, such as blacksmith, religious leader, and warrior, inter alia. The Special Rapporteur was informed that relations among the different castes are very hierarchical and give rise to the exclusion and marginalization of certain castes, such as that of blacksmiths, in favour of others. Access to certain functions, activities and responsibilities is therefore closely linked to caste identity and marriages are highly codified according to descent. For example, the Special Rapporteur met with members of the blacksmith caste, who reported that 90 per cent are involved in business and retailing, that only 5 per cent are primary school teachers and that their sons cannot marry girls from other castes. Although some of the Afro-Mauritanian ethnic groups are not divided into castes, they too are very hierarchically organized and relations among the various subgroups are highly influenced by descent.

10. The Special Rapporteur noted that Mauritanian society is highly stratified along ethnic and caste lines, with de facto slaves and descendants of slaves assigned the lowest status, which is passed down through the generations. This stratification, which has historical roots, fuels latent tensions and conflicts which at times turn violent. The visit of the Special Rapporteur was timely in this regard as it took place a few months after ethnically tinged violent incidents erupted in Kaedi, the largest city and administrative

[2] Rapport de la société civile sur la mise en œuvre du Pacte international relatif aux droits civils et politiques (PIDCP) (October 2013).

[3] Unrepresented Nations and Peoples Organization (UNPO) and Initiative de Résurgence du Mouvement Abolitionniste en Mauritanie, alternative report submitted to the United Nations Human Rights Committee at the 107th session during the consideration of the first periodic report of the Islamic Republic of Mauritania (February 2013).

centre of the Gorgol region in the South. The incidents, which occurred on 7 July 2013, involved individuals from the Moorish and Peulh communities, and left 21 people injured and 15 shops looted, with 29 individuals arrested. Local authorities informed the Special Rapporteur that, although this was the fourth incident of the kind, there was a much more heightened ethnic dimension than in previous events, reflecting the mounting tensions between the Moors and the Afro-Mauritanian communities during the election process. According to information received, violence erupted in the city's main market after a young Moorish man assaulted an older Peulh woman, triggering anger among some Peulh people present at the scene, who attempted to retaliate by targeting the Moorish shop holders in the area. It was also reported that in the days following the incident members of the *Touche pas à ma nationalité* movement gathered in front of the police station where the young Moorish man had been held to demand that he be duly brought to justice and not released. An added complication, as explained by some interlocutors, was the increasing instrumentalization of isolated incidents that were then turned into ethnically polarized confrontations. The underlying ethnic discrimination, according to some interlocutors, was evident in the official response to these events in that the victims from the Moorish communities affected by these incidents had already received some form of compensation and support, whereas the Afro-Mauritanian economic operators who lost assets and profit as a result of the incidents of 1989 had not.[4]

III. Legislation

11. Mauritania is a State party to eight of the core international human rights treaties, including the Convention on the Elimination of all Forms of Racial Discrimination and international treaties prohibiting slavery and forced labour including child labour. In addition Mauritania has been a State Party to the African Charter on Human and Peoples' Rights since ratifying the Charter in 1986.

12. With regard to the domestic legal system, in 2008, Mr. Diène recommended that, in order to focus on the central role of social multiculturalism and strengthen the ongoing drive towards democracy, the Constitution should be amended to include the affirmation that Mauritanian society is built on democratic, egalitarian and participatory multiculturalism, and the recognition of the main ethnic groups or communities in society and their languages and cultures (A/HRC/11/36/Add.2).

13. The Special Rapporteur was pleased to note that the Constitution had indeed been amended to this effect. In addition to article 1 of the Constitution of 1991, which guarantees equality before the law to all citizens without any distinction as to origin, race, sex or social condition, article 2, as revised by Law No. 15 of 2012, sets forth that the people of Mauritania, united throughout history by shared moral and spiritual values and aspiring to a common future, recognize and proclaim their cultural diversity, the basis of national unity and social cohesion, and its corollary, the right to be different.

14. Given that language policies have contributed to polarizing the various communities, Mr. Diène also recommended that, in addition to Arabic, Pular, Soninke and Wolof should be given constitutional status as official languages (A/HRC/11/36/Add.2). While article 6 of the Constitution recognizes Arabic, Pular, Soninke and Wolof as national languages, it still provides that the official language is Arabic.

[4] Submission from the Collectif des opérateurs économiques victimes des évènements de 1989 en République Islamique de Mauritanie.

15. Despite Mr. Diène's recommendation to insert specific provisions on racial and ethnic discrimination in the Criminal Code, and adopt comprehensive legislation against all forms of discrimination, incorporating a definition of discrimination that is applicable in all areas of social life and that contains all the elements of article 1 of the Convention on the Elimination of Racial Discrimination (A/HRC/11/36/Add.2), these reforms remain pending. The current Special Rapporteur was told that the above-mentioned constitutional provisions have been interpreted so as to prohibit all forms of racial and ethnic discrimination.

IV. Institutional framework

A. National human rights institutions

16. Mr. Diène recommended the adoption of a law establishing an independent standing national commission, in accordance with the Paris Principles, to uphold human rights, combat discrimination and promote democratic, egalitarian and participatory multiculturalism.

17. The Special Rapporteur welcomes the establishment of the National Human Rights Commission (CNDH), whose mandate and functions are provided for in Law No. 31 of 2010 and which was accredited with "A" status in 2011 by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). CNDH is mandated to monitor and issue alerts on all human rights-related issues. The Commission is required to formulate consultative recommendations on the existing legal framework, raise awareness on human rights among the general population, especially while combating racial discrimination, slavery-like practices and gender-based discrimination. It is also vested with powers to visit, without prior notice, detention facilities to assess whether the fundamental rights of those under custody are being upheld. Finally, the Commission has the power to investigate all human rights violations brought to its attention and take appropriate measures in coordination with the authorities concerned.[5]

18. The Special Rapporteur learned about the efforts the Commission has made in the promotion and protection of human rights, including on issues related to ethnic discrimination, such as the human rights of returnees, the fight against slavery and land disputes as well as monitoring and fact-finding with regard to ethnic incidents, including the incident in Kaedi in 2013. Despite the establishment of a local Committee of Wise Persons to mediate the conflict in Kaedi, the Commission stated that there was a need to have an early warning system in place to allow it to be effective in its mission of conciliation and mediation before tensions turn into violent confrontations.

19. The Commission also played an active role in awareness-raising activities and in initiating public debates on issues such as the prohibition of discrimination, and cultural diversity and human rights.[6]

20. The Special Rapporteur on contemporary forms of slavery, including its causes and consequences recommended the establishment of an independent Government-funded mechanism, enshrined in legislation, which would be empowered to carry out investigations on its own initiative and would have the standing to bring civil cases of slavery or discrimination before the courts (A/HRC/15/20/Add.2). The Special Rapporteur appreciates the establishment of the Tadamoun (Agence Nationale de lutte contre les Séquelles de l'Esclavage, de l'Insertion et de Lutte contre la Pauvreté) – ANLSESILP) agency, set up in

[5] Loi N° 2010-031 abrogeant et remplaçant l'ordonnance N° 015-2006 portant institution de la CNDH.

[6] Commission Nationale des Droits de l'Homme, Rapport annuel 2012.

March 2013 with the aim of identifying programmes to eradicate the consequences of slavery, to design, coordinate, and implement reintegration programmes for returnees and promote programmes to eradicate poverty as advocated in the World Bank's Poverty Reduction Strategy Paper (CSLP) on Mauritania.[7] The agency can lodge complaints against alleged perpetrators of slavery-like practices on behalf of the victims, although at the time of the visit it was still setting up a legal cell to support cases in court. When meeting with agency representatives, the Special Rapporteur was told that the agency had not received any complaints of ethnic or descent-based discrimination. It was also engaged in awareness and public information activities and was involved in land restitution cases and projects to alleviate poverty for those living in very precarious conditions. At the time of the visit it was premature for non-governmental interlocutors to comment on the work of the new agency but some indicated that it was not perceived as independent and that they were waiting to see how it would develop its legal casework.

B. Justice system

21. While commending the achievements in reforming legislation and establishing the necessary institutions to combat discrimination and slavery-like practices, the Special Rapporteur notes that there are significant challenges related to the pace and effective implementation of the law. As a result, many individuals have lost confidence in these institutions and the justice system. To date no case of racial discrimination has been referred to national courts, and the few cases of slavery-like practices brought before courts have led neither to the prosecution nor the punishment of the perpetrators, nor to redress for the victims.

22. In addition, the justice system was reported to work mainly in Arabic, as bilingual judges are rare. This, and the fact that judges appear to be recruited mainly from one caste or tribe, represents a barrier to access to justice, leading to de facto exclusion of those who do not speak Arabic.[8] The practice of prioritizing one language and one caste or tribe also makes access to the judiciary profession very limited for the other ethnic communities and contributes to fuelling impunity for human rights violations, including cases of ethnic and descent-based discrimination, as victims do not trust the justice sector, which they see as skewed in favour of certain segments of the population.

23. The Special Rapporteur heard that the nature of descent-based slavery in Mauritania is such that victims have been indoctrinated over generations into accepting their status as possessions of their masters and remain economically tied and dependent on their de-facto masters; it is therefore extremely difficult for them to pursue cases against their masters in court. The National Human Rights Commission reiterated that victims do not usually lodge complaints as they are not educated and are unaware of their rights and that judicial proceedings are lengthy, cumbersome and expensive and generally lead to further stigmatization. The Commission therefore believes that civil society organizations should be granted leave to lodge complaints on behalf of victims. This should also contribute to building national jurisprudence on a number of issues, including ethnic and descent-based discrimination.

24. The Special Rapporteur also heard numerous complaints of ethnic profiling, particularly by law enforcement agencies patrolling the roads and was informed that

[7] Available from: http://documents.worldbank.org/curated/en/2011/06/14473144/mauritania-joint-staff-advisory-note-third-poverty-reduction-strategy-paper.

[8] Fédération international des ligues des droits de l'Homme (FIDH), Mauritanie, "Critiquer la gouvernance: un exercice risqué" (2012).

foreigners detained for identity control purposes were disproportionately of sub-Saharan African origin. Furthermore, lack of translation of statements and lack of interpreters at police stations and during court hearings had already been highlighted by the United Nations Working Group on arbitrary detention.[9]

V. Policies and practices

A. Ethnic discrimination and social cohesion

25. The Special Rapporteur welcomes the process for developing a national plan of action against racial discrimination which was initiated by the Government in 2013 in cooperation with the Office of the High Commissioner for Human Rights. Background research, including examination of national plans of action adopted by other countries within the region, and good practices in this field, as well as the first draft of the plan, were developed and discussed at a first stakeholders' workshop held on 3 September 2013, which the Special Rapporteur had the opportunity to address. During the workshop the Special Rapporteur observed that issues related to ethnicity, the limited representation of the various communities in public positions, and the census and land issues gave rise to animated discussions, as these deeply touched the hearts and minds of people in the country.

26. The Special Rapporteur also welcomes the implementation by the Government, in partnership with United Nations agencies, of a national programme aimed at building social unity through citizenship training and the equitable distribution of resources to vulnerable populations, in particular the returnees and populations affected by slavery-like practices and its consequences (A/HRC/WG.6/9/MRT/1). As part of this programme, in 2013 the Government also embarked on the process of formulating a national strategy on social cohesion (SNCS), a process that is designed to be inclusive and consultative through a series of regional workshops and debates. In the lead-up to the strategy, a number of factors were identified as working favourably towards social cohesion, including a common religion, an active sense of community and generosity, new forms of solidarity (associations, clubs, cooperatives), and the existing policies and strategies to eradicate poverty.

27. Blockages to social cohesion were also identified, such as a complex social fabric, the weakening of the traditional mechanisms of solidarity, the weight of traditions in mentality and practices, and identification with the ethnic group rather than the nation, leading to a sense of citizenship still under construction, problems of national identity, tensions around issues stemming from past human rights violations[10] and eradication of de facto slavery, the inability of the State to address all these blockages and the sensitivity of the subject-matter. In addition, attitudes in dominant and victimized communities have also developed over a long period. These attitudes are deeply held and may be antagonistic to changes that are essential if the victimized community is to progress.

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[9] A/HRC/10/21/Add.2; the Working Group on Arbitrary Detention also found that the different attitudes towards persons of different ethnic origins by officials at detention centres and the conditions of administrative detention, however short, remain a source of concern..

[10] Government of the Islamic Republic of Mauritania, Fonds pour la réalisation des OMD and the United Nations Development Programme (UNDP), "Formulation de la Stratégie Nationale de Cohésion Sociale".

28. Another manifestation of exclusion felt by some groups, and expressed by several interlocutors, is the insufficient diversity in key government and public administration posts.

B. *Passif humanitaire*

29. In 2000 the African Commission on Human and Peoples' Rights (ACHPR) issued an omnibus decision addressing a number of communications filed against Mauritania concerning human rights violations perpetrated by the Government between 1986 and 1992. The Commission examined, inter alia, alleged violations based on an array of atrocities perpetrated or incited by the Government against its citizens and in particular against members of various black ethnic groups. In its decisions the Commission found the Government responsible for grave or massive violations of human rights, including ethnic discrimination, torture, illegal detention, extrajudicial killings and mass expulsion of Afro-Mauritanians. The decision included the following six recommendations designed to remedy the violations and compensate the victims: the need for an independent enquiry and prosecutions; the rehabilitation and reintegration of those expelled; compensation of widows and beneficiaries; reinstatement of workers; eradication of slavery; and effective enforcement of an anti-slavery statute. Since the decision, progress has been made towards achieving both the letter and spirit of the Commission's recommendations. Yet more remains to be done in order to implement these fully.

30. Until now no prosecution has been initiated against the perpetrators of human rights violations committed between 1989 and 1991 against the Afro-Mauritanian population. Law No. 92 of 1993 granted amnesty to members of the armed and security forces who had committed offences during that period. In addition the only copy of the Official Gazette promulgating this law was reportedly never made publicly available. This makes challenging of the law in court and public discussion on how to seek the truth and reparations for past wrongs impossible. Despite prayers for national reconciliation led by the President, the truth about what happened during this period is still treated as a national taboo and no official report about these events has so far been released. As a result, the painful memories of the 1989-1991 events remain vivid in the lives of many women, men, girls and boys who lost loved ones, houses and land, and identification papers, as the Special Rapporteur heard from many of those he met during the visit.

31. The Government reported a number of achievements in relation to the situation of those expelled from the country. It listed the return of 34,000 persons as part of the assisted repatriation programme (*programme special d'insertion rapide*, 1996-1998), the signing of a tripartite agreement in November 2007 under which 24,536 persons were repatriated, and the establishment in 2008 of an agency in support of and for the reintegration of returnees (ANAIR) with an annual budget of two billion MRO (6 million USD), which was then subsumed under the Tamadoun agency.[11] The Government also reported that it had reinstated retirement benefits entitlements for civil servant returnees over 60 years of age.

32. Over the years this agency has implemented, exclusively through the national budget, a number of projects aimed at the economic and social integration of the returnees, including the installation of water-related facilities in the sites where returnees live, support for livelihoods, including those of agro-pastoralists, and the construction of schools and hiring of teachers, inter alia. The agency has also carried out a number of initiatives aimed at strengthening social cohesion between the returnees and other communities including through the mediation of land disputes. The agency has developed a programme (2012–

[11] See para. 19.

2015) with the support of the World Bank, aimed at improving access to health and education for returnees and their sustainable integration through the installation of basic infrastructure (e.g. schools, health centres), support for agro-pastoralist activities, and capacity-building activities.

33. The Government reported that a number of returnees who had been removed from their jobs have been reinstated following their return, particularly at the local level, such as in Rosso, where local authorities stated that 95 per cent of education officers had been reinstated. However, victims and their families claim that many still await restoration into service or satisfactory compensation. In addition the Special Rapporteur heard from the victims he met that some of the children of those killed had been prevented from registering in the census as they had been asked to produce a death certificate for their parents.

C. Disaggregated data

34. The Special Rapporteur was concerned by the absence of data disaggregated by ethnicity and descent, which was underscored in all the meetings he held and confirmed in the various studies on the status of the population he was able to access, which did not include any disaggregation of data. All government interlocutors explained to the Special Rapporteur that this was a result of the need to respect people's privacy and the difficulty individuals have in identifying with only one ethnicity or community. While acknowledging the rationale for this policy approach, the Special Rapporteur is of the view that the absence of appropriate tools to assess the spread of ethnic and descent-based discrimination, such as reliable statistics and data, is among the reasons for the lack of awareness as to the extent of these phenomena and understanding thereof. The mandate has consistently recalled that collection of ethnically disaggregated data and indicators is a prerequisite for identifying the groups affected by racial discrimination, gaining a better understanding of the nature and extent of the inequalities faced by these groups and their members, and for designing targeted policies and measures to remedy such inequalities.

35. While acknowledging the risks that the collection of such data may entail, including aggravating tensions between individuals and groups, leading to further prejudice and stereotypes, and conflicting with individuals' right to privacy, the mandate has indicated that these problems may be overcome if States abide by some key principles, including self-identification (A/66/313 and A/65/295).

D. Census

36. In May 2011 a nationwide census was launched, aimed at registering the population in a biometric database, systematizing national identity cards and finalizing the electoral lists. This is a welcome initiative, since in 2004 the Committee on the Elimination of All Forms of Racial Discrimination had recommended that the State carry out a precise population census not limited to linguistic factors, and produce detailed indicators disaggregated by descent or ethnic origin. The Committee had also recommended that the State party carry out targeted surveys, on the basis of voluntary self-identification, which would make it possible to determine the situation of the groups falling within the definition of article 1 of the Convention on the Elimination of All Forms of Racial Discrimination (see CERD/C/65/CO/5).

37. The authorities explained that the census was necessary to safeguard the security of the country as well as that of its residents and citizens, through the establishment of a centralized national biometric database to replace the 13 uncoordinated regional population databases, which were dismantled in May 2011. The census process started with the

opening of a first census centre in Nouakchott on 5 May 2011; in 2013 there were a total of 216 census centres of which 8 located abroad for the census of Mauritanian expatriates. The Government explained that the census had been designed in three successive phases: (1) registration of the population in possession of all requested documents; (2) registration of those partially fulfilling the documentation requirements; (3) and registration of the population not possessing any identification documents. Although the Government reported that the current census had allowed for the registration of 2.9 million people, representing 700,000 additional citizens who did not appear in the 2008 census and subsequent complementary census operations conducted up to 2009, the current national exercise has brought to the surface not only the deep-seated issues that divided the society along ethnic and caste lines, but also unresolved human rights violations perpetrated in the late 1980s. Since September 2011, demonstrations have continued against certain practices linked to the census exercise and groups which have traditionally been discriminated against have expressed concerns with regard to the registration requirements, which have been viewed by some as an attempt to strip members of Mauritanian society of their right to nationality.

38. According to the conditions set by the National Population Registration Agency (Agence Nationale du Registre des Populations et des Titres Sécurisés – ANRPTS), in order to be registered the following must be submitted:

(a) A 1998 census birth certificate;

(b) A national identification card;

(c) Parents' National Identification Numbers (for persons under 45 years of age, their parents must be registered before they can be enrolled);

(d) Parent's/s' death certificate(s), for individuals under 45 years of age, if applicable;

(e) Any other document confirming the applicant's identity, such as a passport, an old birth certificate, or a certificate of nationality.

39. The Government also reported that registration for each individual is carried out in two steps: (1) identification of the individual through the compiling and screening of existing identification documents; and (2) subsequent registration of the individual's biographic and biometric data.

40. The requirements of the census have reportedly particularly affected the Haratine and Afro-Mauritanian communities. These requirements de facto exclude Haratine whose parents and grandparents were never registered for the most part, and whose births were never registered, being born of parents who had not contracted civil marriages, and therefore could not acquire nationality in their own right. In this regard it is important to note that following a civil status reform in 2010, birth certificates can be issued to children born on Mauritanian soil only if their parents' marriage is registered and they can provide a marriage certificate in compliance with the Personal Status Code of 2001 (Law 2001-052 of 19 July 2001), which establishes that traditional marriages must be approved by a civil registration office within three months to be legally recognized.

41. The Government reported that, for the first two years of the census campaign, the parents' marriage certificate was not required for the registration of children; however when the number of registered persons reached 2 million and that of registered children increased significantly, the production of a marriage certificate was made mandatory. The Government explained that this measure had been enforced to fulfil two objectives: (1) to safeguard the interest of the child and the mother and (2) to educate the population on civil marriage registration, which is a civil act constituting both a basic right and a legal obligation. However, these requirements have also led to the exclusion of a large number of Mauritanians from remote rural areas, where access to public services is limited. Moreover,

in accordance with Muslim traditions, most marriages in the past were contracted only before the religious authorities and not registered as civil acts, which is still the case in remote areas, thus leading to potential statelessness for a number of children.

42. Although the national census agency is enrolling returnees on the basis of the existing lists produced by the ANAIR agency, which registered all returnees within the framework of the 2007 Tripartite Agreement, returnees face challenges with the current enrolment process. It has been reported that some of the returnees have not had access to enrolment and that fewer than half the returnees have been enrolled, although ANAIR reports rates above 80 per cent. In order to remedy the situation and allow access to enrolment for all returnees, a joint committee, including representatives of the returnee community and the national census agency, was established in 2013 and meets weekly. The Office of the United Nations High Commissioner for Refugees (UNHCR) monitors the situation, and cooperates directly with ANRTPS with regard to the enrolment of returnees and any related litigation. The national census was also reported to have affected the process of obtaining identity cards for the returnees, thereby once again victimizing this group. The Government reported that no new identity cards would be issued until the census was complete and, at the time of the visit, it was still ongoing. Returnees generally do not have identity cards but only receipts proving that their request for an identity card is pending. These receipts do not seem to be valid for identification or transactions. Without identity cards, individuals cannot travel or engage in administrative procedures to obtain a certificate of nationality or a marriage certificate, which are now mandatory for registering children born in returnee sites.[12] It also affects their ability to register as voters. This situation has so far disproportionately affected the most marginalized groups and groups at risk of discrimination and has created obstacles for returnees seeking to reintegrate harmoniously into one of the least developed areas of the country and enhanced the risk that some members of these groups, who were deprived of their nationality prior to expulsion from Mauritania, will be unable to prove re-acquisition of nationality and will remain stateless.

43. The Special Rapporteur learned about the difficulties that some Mauritanians living abroad have faced in registering in the census, particularly those who are unable to produce a residence permit.

44. The Special Rapporteur was also informed that the census recognized four ethnic classifications, namely Moorish, Soninke, Fulani (Peulh) and Wolof, thus limiting the available choices. It is also not based on self-identification. Certain groups claimed that they were asked by census officials to undertake additional tests to prove their nationality, involving the ability to cite particular religious verses, to speak the Hassaniya language or recognize key political and public figures.[13]

45. In line with general recommendation No. 8 (1990) of the Committee on the Elimination of Racial Discrimination, on identification with a particular racial or ethnic group, the mandate has consistently indicated that self-identification should constitute a pillar for the collection of ethnically disaggregated data, to ensure respect for the right of individuals to assert their own identity. While implementing this principle may lead to underreporting and inaccurate data, it is based on the important notion that the State should not impose an identity on the individual (A/65/295, para. 55).

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[12] Open Society Justice Initiative, Implementation Dossier, Communication Nos. 54/91-61/91-98/93-164/97-196/97-210/98: Malawi Africa Association, et al./Mauritania, October 2011.

[13] Anti-Slavery International, Minority Rights Group International & SOS-Esclaves, submission to the United Nations Human Rights Committee, 109th session, 9 September 2013.

46. Since the start of the census exercise, members of the *Touche pas a ma nationalité* movement, which gathers together young people from across the spectrum of society, have organized several demonstrations to denounce the alleged discriminatory practices of certain census officials, which have led to delays in registration, with certain individuals being unable to register. Some of the demonstrations, such as that of 10 September 2011, were reportedly dispersed by law enforcement agencies with the use of force and tear gas. These incidents occurred in various parts of the country. For example on 26 September 2011 in Kaedi a member of the movement was allegedly severely beaten by police officers during a demonstration by young people to protest irregularities in the census. It is reported that the complaint submitted by his family was dismissed. On 27 September 2011 in Maghama the police fired against young protestors who were members of the movement, killing one young boy and injuring nine others. Despite some disciplinary measures taken against the alleged perpetrators and a complaint lodged by the victim's father before the Kaedi court, it appears that no investigation has been carried out to bring those responsible to justice.[14] These cases bear witness yet again to the shortcomings of the justice system.[15]

47. The composition of ANRPTS, which oversees the census process and employs 1,200 census agents, reportedly does not reflect the ethnic diversity of the country, as the Special Rapporteur learned during his meetings.[16] He regrets that despite several requests he was not granted the opportunity to meet with representatives of ANRPTS to discuss the above issues.

48. The National Human Rights Commission also informed the Special Rapporteur that it had received information on about 60 cases of irregularities and difficulties related to the census registration, including mistakes in the spelling of names and dates of birth, and had asked the administration to issue instructions to clarify certain procedures.

E. Poverty eradication

49. In 2008, 42 per cent of the Mauritanian population was living below the poverty line, estimated at UM 129,600 (US$ 433), which was a reduction of 1.2 per cent as compared with 46.7 per cent in 2004. Poverty has remained a rural phenomenon, with rural populations living below the poverty line estimated at 59.4 per cent, compared with 20.8 per cent in urban centres. It was also estimated that in 2008, 25.9 per cent of the population lived in situations of extreme poverty, fixed at UM 96,400 (US$ 322), which, not surprisingly, affected mostly the rural areas, where 40.8 per cent of the population live in extreme poverty, compared with 7.7 per cent in urban centres.[17] The poorest areas, with an estimated 60 per cent of the population living below the poverty line, were estimated to be Tagant, Gorgol and Brakna. As mentioned in section D, population studies do not disaggregate data by ethnicity and descent and thus data on regional diversity may be the closest proxy indicator, as explained by some interlocutors.

50. Poverty is undeniably a big challenge in Mauritania, which cuts across all groups and communities. Despite some limited assistance provided by the Government to former slaves or descendants of slaves in the form of land, a number of government interlocutors claimed that the groups which have been historically marginalized due to slavery continue to be economically dependent on their former masters. This situation perpetuates their

[14] See note 2.

[15] See section B.

[16] Alkarama, rapport alternatif soumis au Comité des droits de l'homme, 13 septembre 2013.

[17] Ministère des affaires économiques et du développement, Office national de la statistique, "Profil de la Pauvreté en Mauritanie – 2008".

marginalization, even if there is no intent to keep them in slavery-like conditions. Yet poverty and discrimination are, everywhere in the world, strictly intertwined in a cycle that is unlikely to be broken unless they are both tackled simultaneously. Discrimination is also about distribution of resources and, in the globalized market economy, the worst off are frequently, if not systematically, members of certain ethnic groups whose particular vulnerability results partly from a history of discrimination, oppression and exploitation.[18]

51. The Special Rapporteur therefore welcomes the emphasis placed by the Government on eradicating poverty through major development projects. He was pleased to hear that these projects have targeted the so called "triangle of poverty", which was re-named the "triangle of hope", where some of the most marginalized groups live and where the entire population has been living below the poverty line. These projects include rural electrification, building of road networks, irrigation projects, and the development of income-generating activities run by women. According to the Government, a number of individuals have also benefited from access to land schemes and around 12,000 households from cash transfers with conditions attached such as sending children to school and visiting health centres. The Government stated that the budget devoted to projects targeted at improving the living conditions and social status of historically marginalized groups has notably increased, reaching more than UM 170 billion (US$ 568 million). However, no projects specifically targeting former slaves have apparently been put in place, and Haratines have been only indirect end beneficiaries of projects addressing general poverty. The Special Rapporteur welcomes these developments and this comprehensive approach to combating discrimination and exclusion. Nevertheless, he wishes to recall that eradication of poverty through an increase in livelihood opportunities and improvement in living conditions is not a panacea for fighting discrimination, and should be accompanied by an increase in life choices.

F. Youth and education

52. Approximately 70 per cent of the population is aged under 30, with those aged between 10 and 30 representing 40.8 per cent within this segment of the population.[19] In 2000, those below the age of 30 accounted for 72.4 per cent of the unemployed. Young people therefore represent a significant and mostly vulnerable part of the population. A large number have been compelled to migrate from rural areas to urban centres because of the lack of the necessary infrastructure such as schools, health centres, and youth centres to address their needs. The national policy on youth, leisure, sports and its implementation strategies (2011-2016) was adopted against this backdrop. The specific objectives of this policy are: to create an enabling environment for young people to participate in the process of economic and social development; to promote cultural, sport and socio-educational activities; to promote the spirit of entrepreneurship and social integration; to develop mechanisms to protect young people and prevent juvenile delinquency and to promote a culture of peace and democracy among youth. It is important to note that this policy does not list among its objectives the promotion of social cohesion and equality. It makes reference to the need to strengthen civic education in order to consolidate the legal and institutional framework necessary to support the full development of young people, with the focus on the promotion of youth associations. In this regard, the Government reported that

[18] International Council on Human Rights Policy, *Racial and economic exclusion: policy implications*, (Versoix, 2001).

[19] Ministère de la culture, de la jeunesse et des sports, Politique nationale de la jeunesse, de loisirs, des sports et ses stratégies de mise en œuvre.

it had organized a series of multicultural festivals to enhance social cohesion and reassert the complementary nature of the different cultures in the country.

53. Young people, particularly in rural areas, appear to be strongly attached to the traditional values of their groups of origin: young people identify first and foremost with the group to which they belong rather than to the nation. Some young people, for example, believe that maintaining the caste system is necessary to preserve the group identity and claim that mixed marriages are unacceptable. As a result the ethnic, religious or descent based groups compete with and fill the space left by public institutions and services which are no longer able to cater for an increasing young urban population, thus undermining efforts towards social cohesion.[20]

54. Social and political awareness remain very limited, particularly in rural contexts, where the adherence to traditional values and mentality is still strong. In this connection, inequalities, hierarchy and stratification are seen as a normal legacy of the past, to the detriment of the ideals of equality of all human beings. This situation also translates into the political choices of young people, who said they had voted for the candidate chosen by their respective communities.

55. From the interactions during the visit, the Special Rapporteur sensed that the feeling of belonging to one nation had not yet been cemented and that individuals were more likely to mobilize along ethnic and caste lines. Hence it was reported that people tended to favour members of their families, their castes, ethnic groups or regions,[21] which perpetuates nepotism in both the political and economic spheres, leading to further discrimination and inequalities.

56. The education system has not effectively contributed to minimizing these sentiments, as over the years the system has been unilingual, alternating exclusively between French and Arabic, before becoming a dual education system. This has consequently contributed to the formation of two distinct categories of professionals and workers, whose access to employment and job opportunities has by default been differentiated and, in some sectors such as public administration, greater for one category than the other.

57. In addition the education system does not effectively play its role in strengthening integration and social cohesion, considering the literacy rate for adults, which was 58.6 per cent in 2011,[22] and the structural limitations linked to the languages of education. The Special Rapporteur noted how language is perceived as a means for domination of some groups over others. The reform to introduce bilingualism in education, which started in 1989, is commendable; however the country needs to shift to effective bilingualism, to provide equal opportunities for all. In this regard the efforts of the Government to train teachers in French are noteworthy but should be stepped up as only 25 per cent of teachers appear to be bilingual (in 2013 2,000 teachers were trained in French). In addition to bilingualism, it is important that the other languages of the country are promoted and taught. In 2004 the Committee on the Elimination of Racial Discrimination recommended in its concluding observations that the State consider including national languages in the education system for children who wish to receive an education in those languages (CERD/C/65/CO/5, para. 20).

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[20] Becapress, Government of the Islamic Republic of Mauritania and UNICEF, "Etude CAP sur les prejugés sociaux, la discrimination et la citoyenneté" (October 2010).

[21] Sall Ousmane and Abdallahi Ould Kerim, "L'introduction des *life skills* en Mauritanie: Document de base à l'intention des concepteurs des programmes scolaires de l'éducation nationale" (June 2005).

[22] See note 1.

58. Another obstacle in the field of education is the difficulty of instituting inclusive schools. The Government enacted a law in 2001 establishing compulsory education for children up to the age of 14; however, many children of former slaves and children with special needs, as well as those whose birth has not been registered, are reportedly not in school. For example, the mayor of Nouakchott informed the Special Rapporteur that 80 per cent of the children in Haratine communities were not in school, of whom a large number were likely to end up in conflict with the law. The Special Rapporteur welcomes the statement of the Minister of Education whereby instructions were given to the effect that schools should receive all children at the primary level regardless of whether or not they have birth certificates or other papers.[23]

VI. Conclusions and recommendations

59. **As the previous Special Rapporteur, Mr. Diène, noted, although discrimination is not to be found in the letter of the law, many individuals de facto do not have equal opportunities with regard to education, employment, business opportunities, or access to justice and to government services.**

60. **The progress achieved thus far by the State towards meeting its human rights obligations and the constructive spirit of openness by the Government vis-à-vis the international human rights mechanisms is noteworthy. Dialogue, cooperation and partnerships remain essential in advancing the protection and promotion of human rights.**

61. **However a number of challenges persist. Some are hard to tackle, as they are deep-rooted in traditions, history and mentalities. Hence bold measures and zero tolerance towards impunity are urgently required to accelerate progress in the realization of an equal and diverse society based on respect for all human rights for all.**

62. **In light of his findings and those of the other United Nations human rights mechanisms which examined issues related to ethnic and descent-based discrimination in the country, the Special Rapporteur would like to offer the recommendations which follow.**

63. **First, the recommendations previously issued by regional and international human rights mechanisms, including Mr. Diène, and which have not been implemented or only partially so, are still valid and the Government should take urgent action to implement these. For ease of reference a link to a table summarizing and clustering these recommendations is included in the appendix.**

64. **The national plan of action against racial discrimination must be based on a thorough analysis/assessment of all the facets of discrimination in the country through the conduct of a baseline study on the status, root causes, manifestations and consequences of the discrimination which has scarred Mauritanian history, with a view to better informing the policies to be implemented. The process for developing the plan must be inclusive and participatory so that all those involved can claim ownership and monitor its implementation; the result of the process must be sufficiently concrete to be measurable. Thus the Government should ensure that all the above elements are considered during the development of the plan, and in the lead-up to its adoption.**

[23] According to the Minister, 18,000 children could not access schools because of lack of birth certificates at the time of the visit.

65. **The Government and its partners should take the opportunity, through the development of the social cohesion strategy, to streamline and focus the various action plans and programmes related to ethnic and descent-based discrimination in order to avoid fragmentation of efforts which have the common objective of achieving an inclusive, diverse society based on human rights and equality. This could also be an opportunity to maximize already limited resources.**

66. **While being aware that data have to be used sensibly, the Government has to demonstrate its political will to address discrimination by investing in independent studies, assessments and surveys to analyse the situation, monitor progress and evaluate results. The Special Rapporteur is of the view that the National Human Rights Commission is well placed to lead such thematic studies. He also strongly encourages United Nations agencies and bilateral donors to support the Government in this endeavour.**

67. **It is paramount that the Government addresses the issues which the census process has highlighted so that individuals, and consequently their children, are not unduly deprived of their right to identity and nationality. The Government should also take measures to prevent children from becoming stateless: a situation which affects mostly children born of non-registered marriages, leading to de facto discrimination against the most isolated communities and the groups which have historically been discriminated against. In this regard, the Special Rapporteur urges the Government to ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

68. **There is a need to improve the effectiveness of the relevant institutions in addressing the problems of discrimination and to win public confidence in their effectiveness and commitment to implementing the law. The competent ministries should therefore include in their annual budgets adequate resources to tackle issues of ethnic-, caste- and descent-based discrimination as well as slavery-like practices within their areas of responsibility, particularly to strengthen the capacity and expertise of officials, and maintain continued cooperation with relevant United Nations agencies, and in particular with the Office of the High Commissioner for Human Rights in Mauritania.**

69. **A policy of affirmative action should be implemented in relation to selection and recruitment of personnel in key State institutions such as the security and armed forces, the justice system, and the civil service. Inclusion of all the groups in all sectors of administration and the private economy is key to the promotion of democracy, national reconciliation and cohesion. Broader representation of ethnic groups within the administration at civil registration centres and law enforcement bodies should be vigorously pursued by the Government with a view to reducing instances of real or perceived discriminatory behaviour and attitudes.**

70. **The Government should promote equal access to political life for the communities which have historically been discriminated against and their political parties, including through the introduction of affirmative action at the national and local levels.**

71. **In a context where social prejudices and ethnic discrimination persist, the Government should strengthen human rights education and civic education, as these are all the more necessary, not only to maintaining social cohesion and embedding a democratic culture founded on human rights, but also to transforming the social fabric.**

72. **A number of concerns related to difficulties in registration, compensation and reparation for some of the returnees, continuing land disputes and the lack of**

accountability for the human rights violations committed in 1989 were conveyed to the Special Rapporteur. Addressing urgently these concerns must be on the agenda for national reconciliation and is a prerequisite for building an inclusive and diverse society. First and foremost, the Government should make the 1993 law publicly available in Arabic and French, a measure which would not involve costly resources. In addition the new national strategy on social cohesion (SNCS) should include a transitional justice component to enable public discussion on the events of the late 1980s which led to the deportation of thousands of Mauritanian citizens and to the deprivation of their nationality and economic power. It is important that victims of these past violations be granted access to effective remedies with a view to building a strong basis for a new social cohesion.

73. Although slavery has been outlawed in law, slavery-like practices are very much alive, together with the social conditions favouring such practices. The institutional and legal frameworks have to be given teeth so that perpetrators are held to account. Amendments to the 2007 anti-slavery law to provide for the capacity of non-governmental organizations to act on behalf of victims of slavery-like practices and to provide stronger protection and support to them should be fast-tracked.

Appendix

Selected recommendations by United Nations human rights mechanisms which have previously examined the human rights situation in Mauritania

These are available from:
http://www.ohchr.org/EN/Issues/Racism/SRRacism/Pages/CountryVisits.aspx.